



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ebasco Constructors Inc.

File: B-231967

Date: November 16, 1988

DIGEST

General Accounting Office has no legal objection to the award of a construction contract under a solicitation consisting of four base items and an option item where consistent with solicitation's Contract Award clause, the two base items awarded represented the lowest offer within the funds available and where, even though evaluation did not include the option item, contrary to the solicitation, the result would not change whether or not the price of the option item was added to those of the two base items which were properly awarded.

DECISION

Ebasco Constructors Inc. (ECI) protests the award of a fixed-price contract by the Naval Facilities Engineering Command (NAVFAC) to National Projects Inc. The award was made under request for proposals (RFP) No. N62467-86-R-0292 for the construction of a ship support complex berthing pier (part A), certain site development work and the installation of utilities and related transportation services (part B) at the new Naval Station being constructed in Pascagoula, Mississippi. The contract work is a critical part of the Gulf Homeporting Program designed to accommodate the homeporting of an aircraft carrier battle group on the United States Gulf coast. ECI alleges that the award, which was limited to 2 of 5 contract line items (CLINs), was inconsistent with the evaluation criteria announced in the RFP. In postconference comments, ECI supplemented its protest with two additional protest allegations.

We deny the protest.

The solicitation was issued on December 28, 1987, and, as amended, solicited separate prices for three items of work broken down into 4 CLINs: CLIN 0001AA (Berthing Pier and

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Site Development and Utilities), CLIN 0001AB (Transportation of government personnel to the construction site), CLIN 0002 (Steam Plant) and CLIN 0003 (Options). CLIN 0003 was an option for miscellaneous items of work which NAVFAC could exercise during the 1-year period following award of the base contract. Award of the option was predicated upon the availability of fiscal year (FY) 1989 funds.

Three provisions of the RFP are relevant to the selection of the awardee.

The section of the RFP pertaining to evaluation of offers, paragraph 1.3, provided that selection of a contractor was to be based on technical acceptability and price with award made to the lowest priced, technically acceptable offeror. Under paragraph 13, Contract Award, the solicitation notified offerors that the government reserved the right to:

". . . accept any item or groups of items of an offer, unless the offeror qualifies the offer by specific limitations. Evaluation will be made on the basis of all items within fund availability. Each and all items must be priced."

Paragraph 1.4, Evaluation of Option, provided that offers would be evaluated for award purposes by adding the total price for the basic requirement to the total price for the option.

Four firms, including ECI and National, submitted proposals by the March 11, 1988, closing date for receipt of initial proposals. All were found to be technically acceptable. However, the agency determined that all four proposals exceeded the available government funds for the project. By letter dated March 30, the contracting officer notified all offerors of their inclusion in the competitive range and also informed them that "[a]ll proposals received exceeded the amount of funds available for the project. Because of this fact, it [was] necessary to consider various changes in the attempt to lower costs." The contracting officer therefore asked each firm to identify potential areas of revision so that a contract could be awarded within the available budget.

Based upon the offerors' responses to the discussion questions and further agency review of the scope of work, the contracting officer issued amendment 5 to the solicitation. That amendment reflected a number of technical revisions, among which was that a salt water pump station was broken out as a new CLIN 0003 and the original option

item was then designated as CLIN 0004. According to the Navy's project manager:

"The contract work was dissected into CLINS in numerous manners in order to fund as much of the work as possible with the amount of funds available while still constructing a complete and usable facility. This was the main thrust behind the enumeration of the steam plant and the salt water to the pier as separate CLINS. Quite obviously, the major portion of the work involved CLINS 1AA & 1AB. Separating out the steam plant, salt water and the option work as separate CLINS would allow the funding of the main work and as many of these additions as possible. This is also evidenced by the option work, CLIN 4. These items of work were items that were not required to be constructed until a later point in the construction schedule. This CLIN was authorized to be split-funded by using FY-89 funds when the Government exercised the option within one year from the date of award."

The amendment solicited best and final offers (BAFOs) and set the closing date for receipt thereof as June 15. All four firms timely submitted BAFOs which were evaluated by the agency.

NAVFAC reports that at the time of award, the available funding was \$33,163,981. Based on the evaluation of BAFOs, the contracting officer concluded that National offered the lowest prices within the fund limitation for CLINS 0001AA and 0001AB. Thus, on July 6, the contracting officer made award to National for these two CLINS in the amount of \$33,012,777, which was \$126,823 less than ECI's price of \$33,139,600 for the same items. ECI's protest followed on July 12. NAVFAC nonetheless authorized performance of the contract upon a finding, under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553 (d)(2)(A)(i) (Supp. IV 1986) that performance was in the best interests of the government.

ECI's primary basis for protest is the assertion that NAVFAC's evaluation of proposals was inconsistent with the criteria stated in the RFP. The protester maintains that since the solicitation provided, in paragraph 1.4, Evaluation of Option, that offers would be evaluated for award purposes by adding the total price for the basic requirement to the total price of the option, it interpreted the RFP as requiring one "unified and unqualified offer" and submitted its offer accordingly. Moreover, ECI argues, the RFP did

not advise offerors that each CLIN would be evaluated separately as to price or that the award of a specific CLIN would be based on that separate evaluation.

In response, the agency and the awardee both argue that the protester's interpretation of paragraphs 1.3 and 1.4 of the RFP is unreasonable. Both parties maintain that contrary to the protester's assertion, the RFP clearly and unambiguously stated that the government reserved the right to limit its award to any item or group of items within fund availability.

A solicitation is not ambiguous unless it is susceptible of two or more reasonable interpretations. See Carter Chevrolet Agency, Inc., B-228151, Dec. 14, 1987, 87-2 CPD ¶ 584 at 4. To be reasonable, an interpretation must be consistent with the solicitation read as a whole. Where, as here, there is a dispute between the protester and the agency as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions. See Malkin Electronics International, Ltd., B-228886, Dec. 14, 1987, 87-2 CPD ¶ 586 at 4. Applying this standard here, we find that the solicitation is not ambiguous, and that the protester unreasonably interpreted the RFP.

The protester maintains that its interpretation that CLINs 0001 through 0003 constitute the basic contract requirement is valid because the RFP identifies, with great specificity, that CLIN 0004 is the option item. From this, ECI concluded that NAVFAC would determine the low acceptable offer by adding all the base contract requirement prices to the option price. The protester insists that under this evaluation scheme it was the lowest priced offeror for the basic requirement, CLINs 0001 through 0003, as well as the basic requirement plus option, CLINs 0001 through 0004, and therefore is entitled to the award.^{1/}

We think ECI unreasonably has read into the RFP distinctions that are not there. First, we note that although the RFP contained separate pricing schedules for each CLIN, it did not request a total price for all CLINs. Further, although offerors were required to price all items, that requirement does not, as the protester seems to argue, preclude an offeror from qualifying its offer. Rather, the RFP provides

^{1/} Under an interpretation in which all CLINs are totaled, the protester would be the low offeror by \$354,821 (National, \$40,150,001; Ebasco, \$39,795,180).

that the government may accept any item or group of items unless the offeror qualifies its offer. We have consistently held that this language is sufficient to indicate that award may be made on an item basis where the award clause in the RFP does not specifically require an aggregate award. See American Bank Note, B-222589, Sept. 18, 1986, 86-2 CPD ¶ 316 at 5; 3M Deutschland GmbH, B-221841, May 20, 1986, 86-1 CPD ¶ 473 at 6.

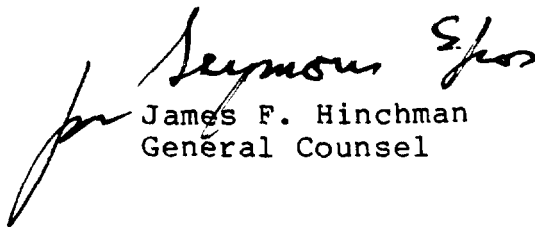
In other words, under the terms of the solicitation, offerors must price each and all items separately and award may be made on an item basis to the lowest priced, technically acceptable offer for that item(s) provided acceptance of that item(s) will not exceed the funds available for the project. As to the nonoption items, it is undisputed that National submitted the lowest offer for the two CLINs that were ultimately awarded to the firm. As the protester points out, paragraph 1.4 of RFP also provided for the price of the option item, CLIN 0004, to be considered in the evaluation. The Navy's failure to do so, however, did not prejudice the protester because whether or not the option prices are added to CLINs 0001AA and 0001AB, National is lower in price. Under these circumstances, we have no legal basis to object to the award to National. Accordingly, this protest ground is denied.

In its postconference comments filed on September 7, ECI raised two additional grounds of protest based on information contained in the agency report on the protest. The protester alleges that National's BAFO and its modification thereto do not evidence a time or date receipt as required by Federal Acquisition Regulation § 15.411 (1986) and that National's modification letter was not signed by a duly authorized representative of the firm. We find these supplemental bases of protest to be without merit.

According to the agency and the awardee, National's June 15 modification letter was included in the sealed proposal package submitted by the firm. The agency further states that National's proposal package was among the proposals removed from a locked safe at 3 p.m. on June 15, the time and date set for receipt of BAFOs. NAVFAC argues that its failure to time and date stamp the BAFO and modification letter submitted by National is a minor informality that does not affect the validity of an otherwise proper award. In that regard, National points out that the protester's own BAFO does not evidence a time and date stamp. As to the authority of the individual signing the modification letter,

NAVFAC and National both assert that the signature, followed by the phrase "Attorney-in-Fact," on National's letterhead clearly evidences the representative's authority. We have no reason to conclude otherwise.

The protest is denied.

 James F. Hinchman
General Counsel